

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CRIMINAL NO. 02-00177 HG-03
	)	
Plaintiff,	)	<b>ORDER GRANTING GOVERNMENT'S</b>
	)	<b>MOTION TO REDUCE SENTENCE</b>
vs.	)	<b>UNDER RULE 35(b) OF THE</b>
	)	<b>FEDERAL RULES OF CRIMINAL</b>
JERAL E. SMITH,	)	<b>PROCEDURE</b>
	)	
Defendant.	)	
_____	)	

**ORDER GRANTING GOVERNMENT'S MOTION TO REDUCE SENTENCE UNDER RULE  
35(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE**

On March 20, 2003, Defendant Jeral E. Smith ("Defendant") pleaded guilty to conspiracy to distribute and possess with intent to distribute crystal methamphetamine, a Schedule II controlled substance. On November 17, 2003, the Court imposed a sentence of 87 months' incarceration, determining that Defendant qualified for the safety valve provision of 18 U.S.C. § 3553(f)(1)-(5). The sentencing range was 108-120 months. The Court granted Defendant's motion for downward departure based on a medical issue.

On November 17, 2004, the Government filed a Protective Motion under Rule 35(b) of the Federal Rules of Criminal Procedure. The Protective Motion expanded the applicable time period for the Government to file a Rule 35 Motion. On July 12, 2006, the Government filed a motion seeking a reduction of

Defendant's sentence, pursuant to Federal Rule of Criminal Procedure 35. The Government furnished details of the post-sentencing assistance provided by Defendant.

Based on Defendant's assistance, the Government recommended that Defendant's sentence be reduced to time served.

#### **STANDARD OF REVIEW**

Federal Rule of Criminal Procedure 35(b)(1) provides:

Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

A Rule 35 motion is essentially a plea for leniency and is addressed to the sound discretion of the district court. United States v. Smith, 964 F.2d 885, 887 (9th Cir. 1992).

#### **ANALYSIS**

The Court finds that Defendant substantially assisted the government, entitling Defendant to a reduction of his sentence pursuant to Rule 35(b)(1). Based on the nature of Defendant's cooperation, the Court finds that a sentence reduced to time served is appropriate and is consistent with the Sentencing Guidelines and the Sentencing Commission's policy statements.

**CONCLUSION**

In accordance with the foregoing, the Court GRANTS the Government's motion filed on July 12, 2006, and reduces Defendant's sentence to time served.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, August 11, 2006



/s/ Helen Gillmor  
Chief United States District Judge

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United States v. Jeral E. Smith, Criminal Case No. 02-00177 HG-03; **ORDER GRANTING GOVERNMENT'S MOTION TO REDUCE SENTENCE UNDER RULE 35(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE**